



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: 201403018

Release Date: 1/17/2014

Date: October 21, 2013

UIL Code: 501.32-00

501.32-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

All Years

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Kenneth Corbin
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 8, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Trustee
C = Trustee
D = Trustee
E = Brother of C
G = Organization
H = Foreign Organization
J = Language
N = State
Y = Country
X = Date
m = dollar amount

UIL:

501-03.00
501.32-00
501-32-01

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below. This letter supersedes our proposed adverse determination letter dated April 30, 2013 and includes consideration of your protest.

Issues

- 1.) Do your net earnings inure to the benefit of insiders, precluding exemption under section 501(c)(3) of the Code? Yes, for the reasons described below.
- 2.) Does your lack of control and discretion over the funds you send to H, located in

Letter 4036(CG) (11-2011)
Catalog Number 47630W

the foreign country Y, preclude you from exemption under section 501(c)(3) of the Code? Yes, for the reasons described below.

Facts

You were incorporated on X in the state of N by B, C and D, who are also your trustees. Your Articles of Incorporation state you were formed for religious and educational purposes as described in section 501(c)(3) of the Code.

Your application for exemption states you were formed to support advanced Talmudic scholarship in foreign country Y. To that end, you provide a "modest stipend of [m dollars] distributed twice yearly to 36 exceptional students of Talmud, or Jewish law." The scholars are hand-picked by your Board of Trustees and they are all married with large families living below the poverty line. The scholars spend as much as ten to twelve hours a day immersed in Talmudic literature and prayer. The stipends you provide are intended to help alleviate the students' financial burdens.

You indicated recipients are accepted based upon availability. When a spot opens up, you place advertisements in local weeklies, neighborhood synagogues, and public advertisement boards. Applicants must demonstrate exceptional proficiency in Talmudic studies and a dire economic situation. Trustee D, also a Rabbi (hereafter Rabbi D), splits his time between the United States and the foreign country Y. Rabbi D personally meets with and interviews all applicants, and the Board of Trustees selects the final recipients. Rabbi D is in constant contact with the recipients in order to assess and encourage their progress. If he deems a recipient no longer eligible, the Board of Trustees decides on whether to admonish the recipient, impose conditions, or terminate his stipend. Rabbi D oversees all distributions.

With your initial application you indicated one of the stipend recipients is E, a brother of C. E is "...an accomplished, well respected Talmudic scholar, completely dedicated to advancing his scholarship."

The recipients of your stipend attend any of three different schools in foreign country Y. Rabbi D is the Rabbi and Dean for one of the three schools. The students must submit to you their names, addresses, family size and annual income. There is no written application. The most important criterion in determining eligibility for a stipend is the candidate's level of scholarship. The candidate is subjected to a rigorous oral examination by his school's dean, the results of which are reported to Rabbi D. In addition, the candidate must interview with Rabbi D. The candidate must agree to dedicate a minimum of 40 hours per week in intensive study, to sit for two monthly oral examinations on the material covered, and to submit a report on the material every six weeks.

The students are not pursuing a degree. In Judaism, studying the holy works is

performed for its own sake. Talmudic scholars continue their studies their entire lives. For this reason you are prepared to distribute stipends for as long as the student is immersed in his studies, with no time or monetary limit.

Your application indicated that you distribute stipends to Talmudic scholars studying in foreign country Y, but that you operate "completely in America." You later stated, "Money that is designed for distribution is transferred to [your] bank account in foreign country Y. All stipends are distributed by check from this account to the student for deposit only." Rabbi D personally signs and distributes all checks. Stipends are paid when funds become available, which is generally in the summer time. Rabbi D has the final say on the order in which the stipends are distributed. Although you asserted Rabbi D writes and distributes all of the stipend checks, in fact Trustee C is the signatory on most, if not all, of the checks written during the 18 month period for which you submitted bank statements. The bank statements are addressed to Trustee C's home.

When we requested more information regarding your bank account in foreign country Y you said, "Please note that we erred in our previous correspondence." You do not have a bank account in foreign country Y. You submitted bank statements from your bank account located in the United States. The statements provided were not consistent with your described program. The distributions were not twice yearly, m dollar distributions to 36 individuals. You explained this discrepancy by saying the stipends can be reduced because of extended absences from study session or from inadequate grades, and can be slightly increased for exceptional dedication or outstanding examination grades. If a scholar joins in the middle of the first half of the year, he may receive one check covering the entire year's participation.

A check for several thousand dollars was written from your account to an individual. You said this was to pay another Rabbi to lecture and test the scholars in a difficult and complex area of the Talmud. No other documentation was provided to substantiate this claim.

Your bank statements included a payment made to a credit card company. You explained that this was a reimbursement to someone who used his personal credit card to purchase something for you, not a charge made by you on your credit card. You stated you do not remember what was originally received or who made the charge.

Your bank statements included numerous, frequent checks written to an organization named G. Regarding these payments, you explained that E borrowed money from G. E has accepted upon himself additional responsibilities, including teaching and fundraising. For this reason, his stipend is slightly higher than that of the other scholars. In addition, you have decided to help him repay some of his outstanding debts, including the debt he owes to G. You are repaying those loans obtained by individual E.

There were numerous checks written to Trustee C. Regarding these payments, you stated Trustee C "...borrowed money from [you], not realizing that doing so could be problematic. This rationale was based in part on his not receiving any financial remuneration from [you]. All money borrowed was returned." You stated that you understand a nonprofit organization cannot be used this way and guaranteed that this practice would stop.

A payment was also made to an individual with the same surname as C and E. You indicated that the individual is the sister-in-law of C and that the "loan was repaid." You provided no written record to substantiate the obtainment or repayment of this "loan."

Two checks were written to E totaling approximately \$4000 within a few weeks of each other. You indicated these payments were reimbursements for fundraising expenses. Although it was requested, you did not provide any documentation substantiate this claim.

Several payments were made from your bank account to a tour company. You said the payments were for airline tickets for D for fundraising purposes. Again, you provided no documentation to substantiate these expenditures.

You made several distributions in one month to an organization named H. The distributions totaled approximately \$15,000. When we asked for details regarding these distributions, your authorized representative responded with the following, under the signature of C:

Unfortunately, there has been some miscommunication as regards [sic] the organization's bank accounts. As written earlier, we originally understood that donations are distributed through the organization's bank account in foreign country Y; afterwards, we were told that all distributions are made from the American bank account and that the organization does not own a bank account in foreign country Y. Rabbi D has now clarified the situation as follows.

[We are] in fact affiliated with a larger Y non-profit organization, H. H is recognized by the Y government as tax exempt. H formed smaller non-profit entities in different countries to facilitate the fund-raising process in those countries. Each entity operates independently from the other smaller entities and from^{SH} H.

[We were] formed to operate in America. As stated above, [we] operate as [our] own independent non-profit, raising money in America for [our] expressed purpose, depositing these donations in [our] American bank account, and distributing these donations as stipends directly from that bank account. [We do] not own a Y bank account.

Since each organization is independent, it was always intended that there be no intermingling of funds between the different organizations. However, because of a difficult financial situation, H and [our] accounts were mixed. It seems that checks written in American dollars take two weeks to clear in Y, whereas checks written in [Y currency] clear immediately. Because some of the recipients of the stipends were continuously in dire need of money, Rabbi D made the decision to write the checks in [Y currency] from H's bank account and to then write checks to H from [you].

All checks written from H were supervised by Rabbi D. He has indicated that he can provide all of H's bank statements if necessary (please keep in mind they are all written in foreign language J). None-the-less, we have explained to Rabbi D and the other board members that this practice, although understandable, is not acceptable, since H is not recognized by the IRS as a 501(c)(3) organization.

There were several large ATM withdrawals and other cash withdrawals from your bank account. When asked about these withdrawals, you said that Trustee C holds the ATM card. You said cash withdrawn is money that C borrowed from you. You asserted that Trustee C repaid all loans and has guaranteed that he will no longer borrow money from the organization. However, you did not submit any documentation to substantiate that the loans had been repaid.

Law

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(a)-1(c) of the regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that an organization which otherwise meets the requirements for exemption from federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 63-252, 1963-2 C.B. 101, states that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or channel for, a foreign charitable organization. In reaching this conclusion, the revenue ruling states that it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient. In each case, the question to be decided is whether the amounts paid to the domestic organization are deductible under section 170(a) of the Code. Below are five examples considered:

(1) In pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign, pay the administrative expenses from the collected fund and remit any balance to the foreign organization.

(2) Certain persons in this country, desirous of furthering a foreign organization's work, formed a charitable organization within the United States. The charter of the domestic

organization provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

(3) A foreign organization entered into an agreement with a domestic organization which provides that the domestic organization will conduct a fund-raising campaign on behalf of the foreign organization. The domestic organization has previously received a ruling that contributions to it are deductible under section 170 of the Code. In conducting the campaign, the domestic organization represents to prospective contributors that the raised funds will go to the foreign organization.

(4) A domestic organization conducts a variety of charitable activities in a foreign country. Where its purposes can be furthered by granting funds to charitable groups organized in the foreign country, the domestic organization makes such grants for purposes which it has reviewed and approved. The grants are paid from its general funds and although the organization solicits from the public, no special fund is raised by a solicitation on behalf of particular foreign organizations.

(5) A domestic organization, which does charitable work in a foreign country, formed a subsidiary in that country to facilitate its operations there. The foreign organization was formed for purposes of administrative convenience and the domestic organization controls every facet of its operations. In the past the domestic organization solicited contributions for the specific purpose of carrying out its charitable activities in the foreign country and it will continue to do so in the future. However, following the formation of the foreign subsidiary, the domestic organization will transmit funds it receives for its foreign charitable activities directly to that organization.

Contributions to the domestic organizations described in the first and second examples set forth above are not deductible. Similarly, those contributions to the domestic organization described in the third example which are given for the specific purpose of being turned over to the foreign organization are held to be nondeductible.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if

substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), the Tax Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially. The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court Held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 166 F.3d 1200 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under section 501(c)(3) because its activities resulted in a substantial private benefit to its founders.

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant".

Application of Law

You are not operated exclusively for charitable purposes under section 501(c)(3) of the Code as your net earnings inure to the benefit of Trustee C. Trustee C is a private individual within the meaning of section 1.501(a)-1(c) of the regulations. Your net earnings inure to his benefit, as well as to the benefit of his family, through direct payments you made to him and his family as well as cash withdrawn from your bank account. An organization will be denied exemption if any of its net earnings inure to the benefit of private individuals per section 1.501(c)(3)-1(c)(2) of the regulations. Even a small amount of inurement will prevent exemption to be granted.

Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational test or the operational test, it is not exempt. Although your Articles of Incorporation contain adequate provisions to meet the organizational test, you do not meet the operational test. You have not substantiated the activities you conduct further exclusively 501(c)(3) purposes, as numerous payments have been made to individuals for non-exempt purposes. Some of these payments constitute inurement, as they were paid to and for the benefit of C, your trustee. Your bank statements show inconsistencies and discrepancies and do not support your stated activity of providing scholarships to 36 individuals in the amount of m dollars twice annually.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. Your bank statements and related information shows you have made substantial payments to Trustee C and other individuals to be used for non-exempt purposes. These payments benefit the private interests of Trustee C and others, and not the public as a whole.

Aside from your earnings inuring to the benefit of Trustee C, you do not have adequate control and discretion over how your funds are used. As required by Revenue Ruling 56-304, you do not keep adequate records to substantiate that the grants and contributions you make further a 501(c)(3) purpose. The evidence shows you have sent substantial funds in the form of checks made out to organization H in foreign country Y as a reimbursement for funds that were already distributed by H. You do not track the distributed cash to individuals. You have no records to show who actually received the final distributions or what the funds were used for. Therefore, it is clear that you do not keep adequate records as required by Rev. Rul. 56-304.

You are similar to the organization described in Example 1 of Rev. Rul. 63-252. You have little or no control over who receives the cash in the foreign country Y, or how much they receive. You are, according to your own statement, a fundraising arm in the United States. Like Example 1 in Rev. Rul. 63-252, you simply send the funds to organization H, who distributes it as they wish.

In contradiction to Revenue Ruling 66-79, the funds you raise are not used for the purposes of the domestic organization (you), but rather for the purposes of the foreign organization receiving the grant from the domestic organization (you). By your own admission, you were created by H to "facilitate the fundraising process" in America. You conduct the fundraising and then distribute funds to H who has ultimate control over how the funds are used. Therefore, you do not maintain adequate control to ensure your distributions are used exclusively for purposes described under section 501(c)(3) of the Code.

You are similar to Better Business Bureau of Washington, D.C., Inc. v. United States, because you have a substantial non-exempt purpose. The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. The inurement described above, as well as your lack of control and discretion over contributed funds are both substantial non-exempt purposes.

Much like the above-cited case of Church in Boston v. Commissioner, you were unable to furnish any documentation which would demonstrate your selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. You have no written application. Although you stated you provide bi-annual stipends to 36 students, your bank statements did not confirm either of these assertions.

As in the case of Western Catholic Church v. Commissioner, your lack of sufficient records makes it impossible to trace the use of your money completely. Trustee C receives a private benefit by using your bank account to take out "loans" in the form of ATM withdrawals or withdrawals from your bank account when a personal need arises. You also are paying the debt of individual E, who is related to individual C. You have no

recorded board meeting minutes, nor did you provide any documentation to substantiate the loan payments you made on his behalf. Much like Basic Bible Church v. Commissioner, even if you do serve some level of charitable or educational purpose, you have existed to serve the private benefit of one of your founders, and thus failed the operational test of section 501(c)(3).

Control over financial affairs by Trustee C created an opportunity for abuse. You are not entitled to exemption because your net earnings inure to the benefit of C and his family, also similar to KJ's Fund Raisers v. Commissioner.

As in the case of Peoples Prize v. Commissioner, you have provided only generalizations in response to the detail that is required. When detailed substantiation of expenditures was requested, it was not provided. For example, you made a payment to a credit card company, but did not have records to support the payment, nor did you recall whose credit card was paid. Such generalizations do not establish that you are operated exclusively for exempt purposes.

An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations that exclusively further exempt purposes will not be found to have met the operational test under Section 501(c)(3) of the Code. In contrast to your Conflict of Interest Policy, you were unable to provide any evidence that you have any established policies and procedures to prevent inurement or that you keep adequate records. As in the above-cited case of New Dynamics Foundation v. United States, you have not demonstrated that your operations exclusively further exempt purposes. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

Applicant's Position

In correspondence you submitted, you explained that Rabbi D and the other trustees understand that their practices are not acceptable. You further stated that Trustee C has repaid all loans and has guaranteed that he will no longer borrow money from you.

Service Response to Applicant's Position

Although you have asserted Trustee C will never use your bank account for personal loans again, he is still in full control over the bank account. In fact, after you made the statement that Trustee C will never use your bank account in this manner again, these same transactions continued. The bank statements are mailed to Trustee C's home, he has the checkbook, most checks are written by him, and he holds the ATM card. You have not substantiated any of your purported changes with documentation. The documentation you did provide supports our assertion that your funds are inuring to the benefit of Trustee C. Likewise, the additional bank statements submitted show that

financial activity continues to be inconsistent with your stated activities of providing scholarships in the amount of m dollars, and funds are still being distributed to organizations G and H.

Applicant's Protest

You and your representative have discussed the issues outlined in this letter and indicated that you now understand the severity of inurement and lack of control over your funds. You stated that you recognize that you have been managed in an unacceptable manner and have resolved to take concrete actions to rectify this. To this end, your board of directors have taken the following steps:

- a. You resolved unanimously to remove C from the position of Trustee. He was replaced by an individual noted in the community for his honesty and integrity. You submitted copies of the board resolution and the new trustee's resume.
- b. You also unanimously resolved to cease writing checks to any member of C's family and to cease paying any debt owed by any member of C's family.
- c. You further unanimously resolved to cease writing checks to H.

You submitted a copy of your bank statement for a recent month as evidence of your new method of operating. The only checks written were to a tour company, which you stated was for fundraising travel for D and for four Talmudic scholars. You provided a receipt from the tour company. All four checks had a specific number written in the memo line of the check.

You requested that in light of your material efforts to rectify your previous errors and to meet the operational test, we reconsider our previous decision and grant you exemption under section 501(c)(3) of the Code.

Service's Response to Applicant's Protest

You assert that you have now resolved, for the second time, to substantially change the way you operate so that you qualify for exemption. Even after you previously said you would no longer conduct certain activities that precluded you from exemption, you continued to conduct them. You provided a receipt from the tour company, but it was not written in English and a translation was not provided. The four checks written to Talmudic scholars were substantially more than the "modest stipend" you describe in your application. You did not explain the numbers written in the memo line of the checks you submitted, but previously when we asked about specific numbers written in the memo lines, you indicated they were indicators of payments for a specific debt. Although you have again theoretically corrected deficiencies in the way you function, we

are unable to conclude that you pass the operational test, similarly to the organization described in the above-cited case of New Dynamics Foundation.

Also, your method of distributing stipends to individuals in foreign country Y continues to lack transparency and consistency. You previously said you would issue small stipends in the amount of m, but each of the four stipends paid for the most recent month are all double that amount or more. Your bank statements continue to show inconsistencies in what you describe as your activities and do not support your stated activity of providing stipends to 36 individuals in the amount of m dollars twice annually.

Conclusion

Based on the above facts and law, you do not qualify for exemption under section 501(c)(3) of the Code. Your net earnings inure to the benefit of insiders, precluding exemption under section 501(c)(3) of the Code. Also, you lack control and discretion over the funds you send to H, located in foreign country Y. For both of these reasons, you failed to demonstrate that you meet the operational test as you do not operate exclusively for exempt purposes under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing a Protest". The protest must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying

documents; and whether the representative knows personally that the statements of facts contained in the protest and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the protest process. If you want representation during the protest process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Deliver to:

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth Corbin
Director, Exempt Organizations

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